

GEORGE TOOLE

IBLA 80-82

Decided April 21, 1980

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting for purposes of recordation the notice of location for two lode mining claims, CO-946 (A).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after October 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

APPEARANCES: George Toole, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

George Toole appeals from the decision of the Colorado State Office, Bureau of Land Management (BLM), returning his mining claim location notice for the Elena Queen and Elena Queen No. 1 lode claims because he had not filed the notice with BLM within 90 days after the date of location as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulation, 43 CFR 3833.1-2(b). The notices indicate that appellant located both claims on June 21, 1979. BLM received copies of the notices on October 15, 1979.

Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and renders the claim void.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location * * *.

In his statement of reasons, appellant explains that he had hired a surveying engineer to map his claims in order to comply with the mining laws. He then adds that the locations were certified by the county clerk on August 21, 1979, "complying with your law of 3 months, to file with BLM. The county clerk made the error of returning the original copies to [the engineer], but I wasn't concerned, because I gave him the money to send the claim papers to your office in plenty of time." When the engineer returned the location notices to appellant, those for the Elena Queen and Elena Queen No. 1 were missing so appellant made copies at the courthouse even though he realized they were late and further attempted to contact the engineer to find out if he had timely submitted the notices. There is no indication in the case file of the result of his inquiry.

[1] Under FLPMA and the regulations, the requirements for filing are clear. The Board has repeatedly held that when a notice of a mining claim is not filed with BLM within 90 days from the date of location, it has no force and effect. M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978). The claim must be deemed conclusively to have been abandoned under the terms of the statute and is rendered void. 43 U.S.C. § 1744(c) (1976); Phillip M. Gardiner, 41 IBLA 391 (1979).

The responsibility for complying with the recordation requirements rested with appellant. The fact that appellant's employee did not timely file the location notices for him does not excuse him from compliance. As appellant states, copies of those notices were obtainable at the courthouse.

We note in closing that appellant may relocate these claims and file notice of this as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mining location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

